fied copy of the petition by the fourth Appellants for letters of administration of the estate of the Deceased was sufficient. However, they have not shown any reason why such grant was not obtained or could not be obtained at the time for completion of the sale and purchase of the property or shortly thereafter; what steps, if any, had been taken to extract it or what delay and expenses would be entailed in obtaining it. Nor had they explained why they were unable or unwilling to extract the grant. No attempt was shown to have been made to extract the grant when confronted with a request by the Respondent to produce it. They took a very defensive position and were not prepared to re-examine the question whether in law the grant should be produced. They assumed a lofty and inflexible posture that they did not have to produce the grant and on that basis they proceeded to exercise their right under condition 5 to rescind the Sale Agreement. In these circumstances the conclusion that the Appellants acted unreasonably in invoking condition 5 is irresistible, and we are of the opinion that they were not entitled to exercise their right of rescission of the Sale Agreement under condition 5. The annulment was therefore invalid and had no effect whatsoever.

Appeal dismissed.

Solicitors: *Ruth Kao; Ng, Wong & Chung.*

KIM TENG REALTY PTE. LTD. v. OOI HOE SAN t/a SENG BEE RUBBER CO.

[C.A. (Sinnathuray, Lai Kew Chai & Thean JJ.) May 25, 1984]

[Singapore – Civil Appeal No. 85 of 1982]

Landlord & Tenant – Rent-controlled premises – Breach by tenant – Rent of sub-letting in excess of 110% of recoverable rent paid by tenant – Whether premises recoverable by landlord – Whether sub-tenant a statutory tenant – Control of Rent Act (Cap. 266), ss. 15(1)(g) & 27.

Landlord & Tenant – Statutory tenancy – Conditions for.

The appellants in this case were the owners of rent-controlled premises at no. 327 Beach Road, Singapore (the said premises) which they purchased in 1972. Prior to the purchase, the said premises were let out to one Ng who sub-let the whole of the premises to the partnership of Seng Bee Rubber Company (of which the respondent was one of the partners) for a term of 3 years from October 1, 1970 to September 30, 1973. The appellants served a Notice to Quit dated October 26, 1972 determining the tenancy of the said premises on November 30, 1972. In the meanwhile 3 further agreements in Chinese dated October 1, 1973, October 1, 1974 and October 1, 1976 respectively relating to the letting of the said premises were made between Ng and Seng Bee Rubber Company covering 3 successive periods, viz. October 1, 1973 to September 30, 1974, October 1, 1974 to September 1976, and October 1, 1976 to September 30, 1979.

On August 30, 1975 the respondent's partners retired from the partnership firm and he became the sole proprietor of the business. On September 6, 1979 the appellants served on Ng a second notice to quit to determine his tenancy of the premises on October 31, 1979. Subsequently the appellants instituted proceedings in the District Court against Ng and the respondent, claiming possession of the premises and mesne profits.

In the course of the trial before the learned District Judge evidence came to light that Ng had been receiving rent from the respondent in excess of 110% of the recoverable rent paid by Ng to the appellants. The learned judge gave judgment for the appellants against Ng for possession and for payment of mesne profits in the sum of $163.20 per month from October 31, 1979 and costs. As against the respondent the learned District Judge found that no sub-tenancy to the respondent was created by Ng and vis-a-vis the appellants the respondent was only a licensee. The respondent appealed against the said decision. Rajah J. allowed the appeal and held that the learned District Judge having found for the appellants against Ng under section 15(1)(g) of the Control of Rent Act (Cap. 266) (the Act), should have further held, as a necessary consequence thereof, that the respondent by virtue of section 26 of the Act, had become and was at all material times a statutory tenant of the appellant. He found that Ng was in possession of the said premises at the time the second notice to quit dated September 6, 1979 was served on him. The appellants appealed against the decision of Rajah J.

Held, dismissing the appeal: (1) the second notice to quit served on Ng was an act of surplusage and had no effect whatsoever. The first notice to quit dated October 26, 1972 was duly served on Ng and effectively determined the contractual tenancy of Ng on its expiry, i.e. November 30, 1972. At that time Ng, having sub-let the whole of the premises to Seng Bee Rubber Company was not in actual possession of the premises. Ng did not therefore become a statutory tenant within the meaning of section 27 of the Act;

(2) upon the determination of the contractual tenancy of Ng, the contractual sub-tenancy of the partners also determined and they became statutory tenants of the premises;

(3) the respondent and his partners at that time held the statutory tenancy of the said premises as joint tenants and his tenancy as a joint tenant remained vested in him after his partners retired from the firm, and the respondent became a statutory tenant of the appellants;

(4) the three agreements purporting to create a sub-tenancy of the said premises had no such effect at all, as at that time, Ng was already a trespasser and could not

create or grant any sub-tenancy of the said premises to the respondent.

Cases referred to:

(1) *Tan Eng Seng* v. *Teo Soon Kiat* [1956] M.L.J. 146.
(2) *Solomon* v. *Orwell* [1954] 1 W.L.R. 629, 633.
(3) *Tan Khio Soei & Anor.* v. *Ban Hin Lee Bank Ltd.* [1964] M.L.J. 71.
(4) *Syed Ahmad Al-Junied & Ors.* v. *Reshty* [1969] 1 M.L.J. 87.
(5) *Guan Seng Kee Ltd.* v. *Buan Lee Seng* [1954] M.L.J. 34.

COURT OF APPEAL.

Tan Chin Tiong for the appellants.
P. Suppiah for the respondent.

Cur. Adv. Vult.

Thean J. (delivering the Judgment of the Court): The Appellants are the owners of the premises, 327, Beach Road, Singapore (the "said premises") which they purchased in 1972 and which are premises within the meaning of the Control of Rent Act (Cap. 266) (the "Act"). Prior to the purchase by the Appellants the said premises were let out to one, Ng Hiang Liat, who in turn by a tenancy agreement in Chinese dated September 1, 1970 (Exhibit D.1C) sub-let the whole of the said premises to the partnership firm, Seng Bee Rubber Company, of which the Respondent was one of the partners, for a term of three years from October 1, 1970 to September 30, 1973. Soon after the purchase of the said premises, the Appellants duly served on Ng Hiang Liat a notice to quit dated October 26, 1972 determining his tenancy of the said premises on November 30, 1972. Since then no further step or action appeared to have been taken by the Appellants in respect of the said premises until August 1979. In the meanwhile three further agreements in Chinese dated October 1, 1973, October 1, 1974 and October 1, 1976 respectively (Exhibits D.1D, D.1E and D.1F) relating to the letting of the said premises were made between Ng Hiang Liat and Seng Bee Rubber Company covering three successive periods respectively, namely: October 1, 1973 to September 30, 1974, October 1, 1974 to September 30, 1976 and October 1, 1976 to September 30, 1979. These agreements were couched in a form slightly different from that of the first agreement (Exhibit D.1C), but in substance they were intended by the parties thereto as tenancy agreements of the said premises though, for reasons which we give hereunder, they did not operate as such in law. On August 30, 1975 the Respondent's partners retired from the partnership firm and he became the sole proprietor of the business conducted under the same name or style of Seng Bee Rubber Company. In August 1979 or thereabout the Appellants enquired from Ng Hiang Liat particulars of any sub-letting of the said premises. Enquiry was also made by the Appellants with the Respondent as to the right of the Respondent in the said premises. On September 6, 1979 the Appellants served on Ng Hiang Liat a second notice to quit expressed to determine his tenancy of the said premises on October 31, 1979. Soon thereafter the Appellants instituted proceedings in the District Court against Ng Hiang Liat and the Respondent claiming for possession of the said premises and mesne profits.

Originally the Appellants in their statement of claim sought to recover possession of the said premises against Ng Hiang Liat on the ground that he was not a statutory tenant under section 27(a) of the Act and against the Respondent on the ground that he was in unlawful occupation of the said premises. In the course of the trial before the learned District Judge evidence came to light that Ng Hiang Liat had been receiving rent from the Respondent in excess of 110% of the recoverable rent paid by Ng Hiang Liat to the Appellants. Thereupon the Appellants with leave of the court amended the statement of claim by adding a further and alternative ground for recovery of possession under section 15(1)(g) of the Act, i.e. that Ng Hiang Liat had sub-let the said premises to the Respondent and had received rents in respect of such sub-letting in excess of 110% of the recoverable rent paid by Ng Hiang Liat.

The learned District Judge, on the evidence before him, found that the ground for recovery of possession of the said premises from Ng Hiang Liat under section 15(1)(g) was made out. He gave judgment for the Appellants against Ng Hiang Liat for possession and for payment of mesne profits in the sum of $163.20 per month from October 31, 1979 and costs. As against the Respondent the learned District Judge found that no sub-tenancy to the Respondent was created by Ng Hiang Liat and vis-a-vis the Appellants the Respondent was only a licensee. He held that prior to the first notice to quit dated October 26, 1972 the sub-tenancy of the whole said premises was granted to the partnership firm of Seng Bee Rubber Company and that the partnership had terminated on August 30, 1975. Thereafter, when the Respondent enter-

ed into the last agreement (Exhibit D. 1F) with Ng Hiang Liat on October 1, 1976 there was a new sub-letting to a new firm, a sole proprietorship known as Seng Bee Rubber Company. The Respondent could not derive any right of sub-tenancy under the new sub-letting as by that time Ng Hiang Liat had become a statutory tenant, and as such he could not sub-let the whole of the said premises to the Respondent. In support, the learned District Judge relied on the decision of Whyatt, C.J. in *Tan Eng Seng* v. *Teo Soon Kiat*[1] and a *dictum* of Lord Denning, M.R. in *Solomon* v. *Orwell*[2]. He therefore made an order against the Respondent for possession and for payment to the Appellants of mesne profits in the sum of $675/- per month from October 30, 1979 and costs.

Against the judgment of the learned District Judge only the Respondent appealed, and no appeal was brought by Ng Hiang Liat. The appeal was heard by Rajah, J. who allowed the appeal holding that the learned District Judge, having found for the Appellants against Ng Hiang Liat under section 15(1)(g) of the Act, should have further held, as a necessary consequence thereof, that the Respondent by virtue of section 27 of the Act had become and was at all material times a statutory tenant of the Appellant. He found that Ng Hiang Liat was in possession of the said premises at the time the second notice to quit dated September 6, 1979 was served on him for the following reasons:

(1) his furniture was on the said premises and the letting of the said premises to the Respondent included rental for the said furniture;

(2) the second notice to quit was given on the basis that Ng Hiang Liat was a tenant of the Appellants and was required "to quit and deliver possession" of the said premises to the Appellants; and

(3) the second notice to quit was served on Ng Hiang Liat at the said premises.

Against the decision of Rajah, J. the Appellants now appeal. We find ourselves in complete agreement with Rajah, J. that the order made by the learned District Judge against the Respondent could not be sustained and was rightly set aside. However, with great respect to Rajah, J. we are unable to agree with his finding by inference that Ng Hiang Liat was in possession of the said premises at the time the second notice to quit was served on him. Ng Hiang Liat had not been in actual or physical possession of the said premises as from October 1, 1970, when he sub-let the whole of the said premises to the partnership firm of Seng Bee Rubber Company. He had never regained or resumed possession at any time thereafter and was certainly not in possession at the time of service of the second notice to quit on or about September 6, 1979. It is true that he had some furniture therein, as his sub-letting included the furniture and that it was in evidence that the second notice was served on him by post at the said premises. However, in our view, these facts alone are not sufficient to support the inference that he was in actual or physical possession of the said premises.

In our opinion the second notice to quit served on Ng Hiang Liat was an act of surplusage and presumably was effected out of abundance of caution on the part of the Appellants. It had no effect whatsoever. The first notice to quit dated October 26, 1972 was duly served on Ng Hiang Liat. That notice effectively determined the contractual tenancy of Ng Hiang Liat on its expiry, i.e. November 30, 1972. At that time Ng Hiang Liat was not in actual possession of the said premises, as he had already sub-let the whole of the said premises to the partnership firm of Seng Bee Rubber Company, and further in respect of such sub-letting he was receiving rent in excess of 110% of the recoverable rent paid by him to the Appellants. In the circumstance, Ng Hiang Liat, on determination of his contractual tenancy, did not become a statutory tenant within the meaning of section 27 of the Act. As was decided in the case of *Tan Khio Soei & Anor.* v. *Ban Hin Lee Bank Ltd.*[3], four conditions must be satisfied before a person can become a statutory tenant, namely:-

(a) he must have been a tenant of the premises;

(b) his tenancy must have been determined, not assigned;

(c) he must have remained in possession of the premises after the determination of his tenancy; and

(d) the provisions of the Act must prevent him from being deprived of possession by the landlord of the premises.

Ng Hiang Liat clearly did not fulfil the third and four conditions, and therefore failed to qualify as a statutory tenant of the Appellants as from December 1, 1972. As from that date he became a trespasser. In the case of *Syed Ahmad Al-Junied & Ors.* v. *Reshty*[4], the tenant received rent in

respect of her sub-letting in excess of 110% of the recoverable rent paid to the landlord and a case for recovery of possession under section 15(1)(g) of the Act was made out by the landlord. It was there held by the Judicial Committee of Privy Council that upon expiry of the notice to quit the tenant, having failed to qualify as a statutory tenant, became a trespasser.

We now turn to consider the right of the Respondent in relation to the said premises. Prior to the determination of the contractual tenancy of Ng Hiang Liat on November 30, 1972, the partners of Seng Bee Rubber Company were contractual sub-tenants of Ng Hiang Liat. Upon the determination of the contractual tenancy of Ng Hiang Liat, the contractual sub-tenancy of the partners also determined and they became statutory tenants of the said premises; since the interest of Ng Hiang Liat as a tenant of the said premises had ceased, they became statutory tenants of the Appellants: *Guan Seng Kee Ltd.* v. *Buan Lee Seng Ltd.*[5]. The Respondent was a partner of the firm at that time and accordingly he and his partners at that time held the statutory tenancy of the said premises as joint tenants and his tenancy as a joint tenant remained vested in him after his partners retired from the firm, and he became and is a statutory tenant of the Appellants. It therefore follows that the three agreements (Exhibits D.1D, D.1E and D.1F), purporting to create a sub-tenancy of the said premises had no such effect at all, as at that time, Ng Hiang Liat was already a trespasser and could not create or grant any sub-tenancy of the said premises to the Respondent.

Mr. Tan Chin Tiong on behalf of the Appellants contended that on the expiry of the first notice to quit the sub-tenancy of the said premises determined and the partners of Seng Bee Rubber Company became statutory tenants of Ng Hiang Liat and such statutory tenancy was surrendered either at the time when the second agreement dated October 1, 1973, (Exhibit D.1D) was entered into between the partnership firm and Ng Hiang Liat or at the time when the Respondent entered into the last agreement dated October 1, 1976, (Exhibit D.1F). With respect, this argument cannot be right. If the contractual tenancy of Ng Hiang Liat determined on the expiry of the first notice to quit and Ng Hiang Liat failed to qualify as a statutory tenant, then two consequences must ensue: (i) the interest of Ng Hiang Liat as a tenant of the said premises ceased and he became a trespasser, and (ii) the partners of the firm, Seng Bee Rubber Company who were contractual sub-tenants of Ng Hiang Liat became statutory tenants of the Appellants. If the Appellants had at that time initiated proceedings against Ng Hiang Liat for recovery of possession on the grounds as they did in Summons No. 5794 of 1979 in the District Court, they would have succeeded in obtaining an order for possession against Ng Hiang Liat. The mere inertia or absence of such action on the part of the Appellants for so many years clearly did not alter, and could not have altered, the status of the statutory tenancy which was created by operation of law at that time.

For reasons which we have given, the appeal is dismissed with costs and the sum paid by the Appellants by way of security for the Respondent's costs be paid to the Respondent to account of his costs.

Appeal dismissed.

Solicitors: *Wee Swee Teow & Co.; P. Suppiah & Co.*

PEH KWEE YONG v. SINAR CO. (PTE.) LTD.

[O.C.J. (Lai Kew Chai J.) May 16, 1984]

[Singapore – Originating Summons No. 78 of 1983]

Land Law – Conveyancing practice – Requisition – Road widening of 30.6 sq.m. – Whether an answer to requisition relating to road-widening of land unsatisfactory – Question of fact.

Conveyancing – Requisition – Road-widening of 30.6 sq.m. – Whether answers to requisition relating to road-widening of land unsatisfactory – Question of fact.

By an agreement in writing concluded on December 4, 1982, the plaintiff agreed to buy from the defendants a piece of land known as Lot 3563 in Mukim IV, Ulu Pandan and No. 9 First Avenue, Singapore at the price of $1,860,000. The land had an area of 1,197.7 sq.m. or approximately 12,900 sq. ft. Completion was to have taken place within 8 weeks of the date of the agreement. Clause 6 of the agreement provided that "The property is sold subject to (the purchaser's) solicitors receiving satisfactory answers to all requisitions sent to ... the various government departments and in the event of any of the answers to such requisition being found unsatisfactory to (the purchaser's) solicitors (the purchaser) may annul the sale ..." (words in bracket added).

On December 16, 1982 the plaintiff's solicitors wrote to the defendants' solicitors alleging that, according to the